

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DIVISION OF TEXAS
BEAUMONT DIVISION**

No. 1:09-CR-142

FILED: **9/9/10**
U.S. DISTRICT COURT
EASTERN DISTRICT COURT
DAVID J. MALAND, CLERK

United States of America

v.

Roger Dale Landry, II

Defendant

Report and Recommendation Re:
Defendant's Competency to Stand Trial

Pursuant to 28 U.S.C. § 636(b) and the Local Rules for the United States District Court for the Eastern District of Texas, this criminal proceeding is before the undersigned United States magistrate judge.

On January 14, 2010, the court ordered a psychiatric or psychological exam to determine if defendant was suffering from a mental disease or defect rendering him mentally incompetent to the extent he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense. (Docket No. 25.) Defendant subsequently received an evaluation by Dr. Ralph Newman, M.D. and Dr. Adeirdre Stribling Riley, Ph.D. at the

Federal Medical Center in Butner, North Carolina. On August 4, 2010, a copy of the forensic psychological report was returned by the complex warden.

The psychiatric report concludes that, in the opinions of Dr. Newman and Dr. Riley, defendant is mentally competent to stand trial. The report indicates that defendant does not suffer from a mental disease or defect that impairs his present ability to understand the nature and consequences of the proceedings against him or to assist properly in his defense.

A competency hearing was conducted on September 8, 2010. At the hearing, defendant appeared in court with counsel, John McElroy, Esq. The court admitted into evidence the psychological report detailing the results and findings. Counsel for the government, counsel for defendant, and defendant indicated no objections to the competency findings in the report.

The undersigned therefore concludes that defendant is able to understand the nature and consequences of the proceedings against him and to assist properly in his defense. Defendant has a rational and factual understanding of the proceeding against him, and he has sufficient present ability to consult with his attorney with a reasonable degree of rational understanding. 18 U.S.C. § 4241(d); see also Dusky v. United States, 362 U.S. 402, 80 S. Ct. 788, 4 L. Ed. 2d 824 (1960).

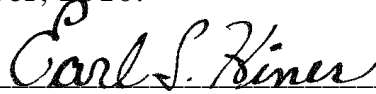
RECOMMENDATION

The court should find defendant competent to stand trial because he understands the proceeding against him and has the ability to assist his attorney under Title 18 U.S.C. § 4241.

OBJECTIONS

Title 28 U.S.C. § 636 normally gives parties fourteen (14) days to object to recommendations submitted by magistrate judges. However, as the parties have agreed that defendant is competent, and this report recommends that defendant be found competent, the court may act on the report and recommendation immediately.

SIGNED this 9 day of September, 2010.

A handwritten signature in cursive script, reading "Earl S. Hines", written over a horizontal line.

Earl S. Hines
United States Magistrate Judge